

CHAPTER NO. 407

HOUSE BILL NO. 1126

By Representative Head

Substituted for: Senate Bill No. 893

By Senator Atchley

AN ACT to amend Tennessee Code Annotated, Title 12, relative to public contracts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 12-10-124, is hereby amended by deleting subsection (c) and substituting the following:

(c)(1) No authority shall contract for the construction of buildings or improvements, the expenditure for which is estimated, projected or budgeted to be in excess of ten thousand dollars (\$10,000) but less than one million dollars (\$1,000,000) except when such contract is made through a public advertisement and competitive bid process. Public advertisement shall be given at least ten (10) days in advance of accepting bids for such construction, and the authority shall award the contract to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid.

(2) No authority shall contract for the construction of buildings or improvements, the expenditure for which is estimated, projected or budgeted to be one million dollars (\$1,000,000) or more except when such contract is made either (a) through a public advertisement and competitive bid process, (b) through a request for proposals process which includes minimum required qualifications, or (c) through a request for qualifications process which includes minimum required qualifications and a selection process pursuant to which multiple proposers are selected and pre-qualified to submit competitive bids. Public advertisement shall be given at least ten (10) days in advance of accepting bids or proposals for such construction. If the authority uses the competitive bid process, the authority shall award the contract to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid. If the authority uses the request for proposals process, the authority shall award the contract to the lowest responsible and responsive bidder who meets the minimum required qualifications. If the authority uses the request for qualifications process, the authority shall award the contract to the lowest pre-qualified bidder.

(3) The authority may reject any bid or proposal from a contractor who (a) at the time of the advertisement for bids or proposals, is a party to litigation or a contractual dispute with the authority or the municipality for which the authority is building or managing the project or (b) has defaulted on a contract with the authority or the municipality for which the authority is building or managing the project within the five (5) year period preceding the time of the advertisement for bids or proposals.

(4) Notwithstanding the foregoing provisions of subsection (c), contractual arrangements for construction delivery methods other than the competitive bid method,

such as but not limited to the construction manager, construction manager at risk and design-build methods, or for remodeling and maintenance may be awarded by a request for proposals process as provided in subsection (d).

(d) The authority shall contract for all services, including construction management services and design-build services, through the process provided in subsection (c) or by a request-for-proposals process; provided, however, no such process shall be required if the authority contracts with a provider of any such service for a project who has been selected by a municipal corporation who is a contracting party or lessee with respect to such project through one of the processes described in subsection (c) or (d); and provided, further, this subsection shall not apply to the provision of services for which a letter of engagement or other arrangement has been entered into prior to the effective date hereof. The request-for-proposals process will invite prospective proposers and will indicate the service requirements and the categories to be considered in the evaluation of the proposals, together with the relative weight of each category. The categories shall include such factors as qualifications, experience, staff availability, technical approach, minority participation and cost, as determined appropriate by the authority. Proposers shall be given at least ten (10) days from public advertisement of the request for proposals to consider the evaluation factors set forth in the solicitation documents before submitting proposals. The contract shall be awarded to the best proposer, using the evaluation criteria set forth above, who meets the minimum required qualifications. Notwithstanding the foregoing provisions, contracts for professional services are not required to be awarded through a competitive bid process or a request-for-proposals process.

(e) No authority shall enter into a lease or lease-purchase agreement for land, buildings or leased premises which requires total lease payments or lease-purchase payments by the authority of ten thousand dollars (\$10,000) or greater, unless such agreement is made after competitive bids upon public advertisement or by a request-for-proposals process. A competitive bid process or request-for-proposals process is not required for an authority to enter into a lease or lease-purchase agreement with a municipal corporation, the state of Tennessee, the United States, or any agency, authority, branch, bureau, commission, corporation, department or instrumentality thereof.

(f) Nothing contained herein shall require the authority to accept any bid or proposal, and the authority may choose to reject all bids or proposals.

(g) An authority contracting with the state of Tennessee shall be subject to the same procurement procedures as though the project were being undertaken by the state of Tennessee unless the State Building Commission determines that a particular project should not be subject to the procurement procedures and includes a statement to that effect in the contract with the authority.

SECTION 2.

(a) Notwithstanding any provision of law to the contrary, the commissioner of environment and conservation has the authority to cause to be purchased and to develop the method for purchasing without the approval of any other agency of state government, raw materials, merchandise for resale, supplies and equipment necessary for the providing of quality services for state park operations.

(b) It is the responsibility of the commissioner of environment and conservation to develop policies and procedures to ensure, to the extent practicable, that purchases made on behalf of park operations are at the lowest possible price while at the same time ensuring quality and timely delivery. The commissioner shall file such policies and procedures with the board of standards for the board's review and approval.

(c) The commissioner has the authority to purchase supplies and equipment through the department of general services and is encouraged to exercise the option to purchase through the department under the provisions of Title 12, Chapter 3, in circumstances which are advantageous for the timely delivery of low cost, quality products.

(d) For the purposes of this section, "park operations" means the following facilities at state parks: inns, cabins, restaurants, golf courses, gift shops, marinas, snack bars, and vending machines.

SECTION 3. The comptroller of the treasury is directed to report to the general assembly no later than February 1, 2003, on the success or failure of the purchasing authority. Such report shall determine if cost-savings have resulted from the enactment and implementation of this act. Such report shall also determine if the state park operations' costs and expenditures and rates charged consumers meet industry standards for facilities at state parks, inns, cabins, restaurants, golf courses, gift shops, marinas, snack bars, and vending machines. Such determination shall include and allocate any expenditures for equipment, services or capital outlay that are provided directly or indirectly to state park operations.

SECTION 4. No expenditure of public funds pursuant to this act shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 United States Code 2000(d).


SECTION 5. The provisions of this act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: June 7, 2001


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 19th day of June 2001


DON SUNDQUIST, GOVERNOR